

ENVIRONMENTAL PROTECTION COMMISSION
REGULAR MEETING/PUBLIC HEARING
MINUTES

February 7, 2007

Wednesday, February 7, 2007	7:30 p.m.	Room 206 Town Hall
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Chairman Hillman called the meeting to order at 7:30 P.M. Commission Members Present: Peter Hillman, Reese Hutchison, Susan Cameron, Pete Kenyon, Ellen Kirby, Ned Lewis and Craig Flaherty.

Staff Present: Richard Jacobson

Court Reporter: Bonnie Syat

Mr. Hillman read the first agenda item:

EPC-76-2006 Mark Raskopf, 60 Andrews Drive, proposing to construct a retaining wall and place fill within the upland review area.

Joel Villaluz, of Risoli Associates, represented the applicant. Mr. Hillman said the applicant submitted an arborist's report and a planting plan. He said the arborist's report was very general and the plantings are substantial. He said that normally the arborist provides more specific information about the trees to be removed. Ms. Cameron said she is concerned with the plantings not being sufficient to control erosion and the protection of the trees to remain. Mr. Villaluz said there is a tree well detail and they are proposing to bring in fill to support the new plants. The Commission continued the discussion of this item until March 7, 2007 to allow the applicant to provide a more detailed arborist's report.

Mr. Hillman read the next agenda item:

Proposed amendments to the "Inland Wetlands and Watercourses Regulations" of Town of Darien. The amendment to section 2.1.y will add Tokeneke Brook and Stony Brook to the "named watercourses" under the definition of regulated activities which will increase the upland review areas associated with these watercourses. The second amendment corrects a typographic error in the "as-of-right" definition.

Mr. Hillman repeated a prior comment that the Commission has been working on these changes since Nancy Sarnier was on the staff. He said there has been an increase in the number of complaints on Stony Brook with the water quality and quantity. He thanked the public for their participation especially Mr. Ross. Even though they are opposed to the changes, they made excellent presentations. He thanked Mr. Windels for bringing the studies done on the watersheds to the Commission's attention. He said Mr. Jacobson's memo summarized the reasons for the proposed changes. He said the Commission has requested a study of Stony Brook, which the Commission would have done regardless of

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the proposed regulation changes. He said he has sent a letter to the Selectmen and others in government (copies were available at the meeting) and recently ha the opportunity to reiterate to the First Selectwoman the Commission's concerns. He said the neighbors may need to get involved.

Mr. Hillman said the changes will bring Stony Brook and Tokeneke Brook into the same category of regulation as the Goodwives River and the other named watercourses. He said that it is not the Commission's intention to deny anyone's right to expand their home. He suggested that a letter be sent to the local realtors informing them of the regulation change.

Ms. Kirby said she is in favor of adopting the regulation changes. She said the changes do not mean that house additions, driveways, and other projects cannot be done. She said the Commission approves the majority of their applications.

Mr. Lewis said that the 2004 studies provide compelling reasons for the changes. He said he is in favor of amending the regulations.

Mr. Hutchison said the Commission takes Mr. Ross's concerns seriously. He said the Commission is known to be receptive to applicants. He said the that he cannot give a lot of weight to the concern that this particular group of Commissioners may not be here ten years from now and as such change the nature of interpretations. The small burden placed on applicants provides a greater benefit to everyone else.

Ms. Cameron said she is in favor of the amendments and has wanted them for awhile. She said the Stony Brook watershed is at least as big, or bigger, than the Goodwives River's watershed. She said Tokeneke Brook also warrants greater protection.

Mr. Kenyon said he is in favor of the amendments and suggested notifying attorneys who do real estate closings of the changes. He said the original wetland regulations imposed a burden on property owners which was necessary to protect wetlands. The proposed changes are in compliance with the DEP recommendations for the upland review area and they are similar to other Town's regulations.

Mr. Flaherty said he is in favor of the amendments for all of the stated reasons. He said Mr. Hillman's letter to the editor invited public comment and suggested another letter informing the public of the changes.

Mr. Hillman made a motion to adopt the amendments to the regulations. A letter will be sent to the realtors and the full text of the regulation changes will be printed in the legal notice. The regulations will be effective February 15 upon publishing of the notice. Mr. Lewis seconded the motion and it passed unanimously.

Mr. Hillman read the next agenda item:

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EPC-87-2006 Sean and Beth Stevens, 17 Oak Park Avenue, proposing a porch, deck, and patio within the upland review area.

Charlie Schafer, builder, represented the applicant. He said they made revisions to the plan and scaled the project back. He said the deck is larger but there is 250 square feet less of impervious area. Mr. Flaherty asked what the surface under the deck will be. Mr. Schafer said it would be crushed stone to keep growth down. Ms. Cameron asked if there were any new plantings proposed. Ms. Hendrickson said that nothing has changed with the plantings since the December submission. She said the proposed plantings were intended to be in addition to the plantings approved with the previous application.

Mr. Hillman made a motion to approve the application. The resolution will include a statement that the application is unique because of a hardship and should not be considered as a precedent form other applications. Mr. Flaherty seconded the motion. Ms. Cameron said she is opposed because the property may change hands but the activity will still be present. The motion passed 6-1 with Ms. Cameron opposed.

Mr. Hillman read the next agenda item:

EPC-80-2006 Ilene B. Grimes, 16 Park Lane, proposing to maintain a drainage ditch and adjacent wetland floodplain by hand excavation.

Mr. Hillman and Mr. Lewis said they listened to the tapes of the public hearing.

Ms. Cameron said she has no problem with the clearing of the waterway but is disappointed with the remediation. She said the Gauthiers provided some remediation on the adjacent property. Mr. Hutchison said the Gauthier violation was much worse because they used a backhoe. Mr. Hillman said the Commission has no better recourse than to approve the work that was done after the fact.

Mr. Kenyon said he questioned whether the Gauthier remediation met the spirit of the remediation plan. Ms. Cameron said it was not relevant to this applicant. Mr. Kenyon said the remediation should include planting and removing the wood pile. Mr. Hutchison said the work was done with a shovel and could be considered maintenance.

Mr. Flaherty said that if an application had been submitted the Commission would have had the opportunity to review the proposal and require removal of the sediment. He said the Army Corp of Engineers policy on removing dredged material is that the removal is not regulated but the deposition of the material in a wetland on the banks of the watercourse is considered depositing material. He said he would recommend the material be removed off-site and the banks stabilized.

Ms. Cameron said she did not believe the Grimes' work caused flooding. She would like to see the wood and brush piles removed. The permit should be one year and require the

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sediment be removed off-site and a stabilization plan should be required. Future maintenance of the ditch should require removal of the material off-site. Mr. Hillman made a motion to approve the application with Ms. Cameron' stipulations. Mr. Lewis seconded the motion and it passed unanimously.

Mr. Hillman read the next agenda item:

EPC-06-2007 Joseph and Maria Teresa Criscuolo, 95 Hoyt Street, proposing driveway construction within a regulated area.

Attorney Arthur Engle represented the applicant. Mr. Hillman said the application warrants a public hearing because of the potential for significant impacts and because it would be in the public interest. He said the Commission will retain Land-Tech again to review the application. Because this is new hearing, information from the previous hearing will not automatically be included in the record and must be re-submitted. The Commission scheduled the public hearing for March 7, 2007. They requested a copy of the deed which describes the easement and information regarding the grades at the intersection of Miller Road and Hoyt Street.

Mr. Hillman read the next agenda item:

EPC-02-2007 Paul Hendrickson, Andy Tomasello and Joseph Criscuolo, 95, 97 & 99 Hoyt Street, proposing watercourse stabilization measures.

Mr. Hendrickson represented himself. He introduced Steve McAlister, P.E. of McChord Engineering. He said the intermittent watercourse drains 2-3 acres of wetland. He said there is severe erosion near his foundation and the stream overflow floods the Tomasello's basement. Mr. Hillman said the plan is well thought out. Mr. Flaherty asked Mr. McAlister to describe the difference between Alternate A and Alternate B. Mr. McAlister said Alternate A will utilize the erosion control blanket instead of rip-rap. Mr. Flaherty asked what the slope will be. Mr. McAlister said 6-7%. Mr. Flaherty asked about the velocity of flow in the channel. Mr. McAlister said the channel was designed for a 25 year storm. Mr. Flaherty said the channel should be designed as a green channel unless velocity calculations do not support it. The applicant would then have to come back to the Commission for a plan amendment. Ms. Cameron made a motion to approve the application with the stipulation that the channel be grass and seeded with a native wetland seed mix. The applicant must submit a plan revision if velocity calculations require a stone lined channel. Mr. Flaherty seconded the motion and it passed unanimously.

The Commission opened the public hearing at 9:10 p.m. Mr. Hillman read the first public hearing item.

EPC-79-2006 James B. and Katherine G. Kane 147 Five Mile River Road, proposing to construct a replacement house and related construction activity within upland review area.

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Mr. Hillman and Mr. Lewis said they listened to the public hearing tapes.

Attorney Wilder Gleason represented the applicant. He said they have provided a soil scientist's report and a report from Rocco D'Andrea Associates. Mr. D'Andrea provided a copy of the flood map showing the last flood cross section above Tokeneke Road. Mr. Flaherty said he is satisfied with the information provided. Ms. Cameron made a motion to close the public hearing. Mr. Hillman seconded the motion and it passed unanimously.

The Commission deliberated on the application. Ms. Cameron said it was a well thought out application and environmentally sound. The Commission requested staff to draft a resolution approving the application.

Mr. Hillman read the next hearing item:

Mr. Hillman and Mr. Lewis said they listened to the public hearing tapes.

EPC-77-2006 Frank Yorchika and Samuel Starks 6 Robin Hood Lane, proposing to construct a new house and provide wetland enhancements within a wetland and within the upland review area. (continued from 1/17/07).

Attorney Wilder Gleason represented the applicant. He said they have addresses the outstanding issue of the flood storage volume in a memo from Don Ferlow. He said there will be an additional 83 cubic feet added to the existing 583 cubic feet. He said Mr. Hill's comments made the application better. Mr. Flaherty said the proposal will provide an improvement to the watershed and it is important to include the information on the record.

Mr. Flaherty made a motion to close the public hearing. Mr. Hutchison seconded the motion and it passed unanimously. The Commission requested staff draft a resolution approving the application.

Mr. Hillman read the next hearing item:

EPC-85-2006 John P. Gallagher and Tricia Gallagher, 49 Deepwood Road, proposing to construct a replacement house and related construction activities within the upland review area

Attorney Wilder Gleason represented the applicant. He provided a copy of the deed and the Assessor's Map. He said the existing house was built in the 1950's and has a small encroachment into the upland review area and a shed in the wetland. He said they are proposing to build out over the existing driveway within 27 feet of the wetlands. He said the revised pool and terrace locations are outside the upland review area as shown on the original application submittal. He said there will be a significant reduction in impervious surface within the upland review area. Ms. Cameron asked if there will be an overall

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increase. Mr. Gleason said they are providing stormwater detention for the increase. Mr. Liberman said there will be an overall increase of 4,600 square feet.

Mr. Hillman asked if there was anyone from the public who wished to speak. No one from the public asked to speak. Mr. Gleason provided a copy of a letter from the neighbors stating no objection to then proposal.

Mr. Liberman said the property contains a stream with significant flow surrounded by a second growth forest and wetland. He said they will be enhancing the drainage on the property over what is existing now. The driveway will be flipped to the other side, out of the upland review area. He described the system of rain gardens and detention which will handle the entire impervious surface area. He said the rain gardens will allow surface flow through a vegetated buffer to the wetland. Ms. Cameron said they have an opportunity to stay out of the regulated area. Mr. Gleason said there would be no additional benefit to staying out of the regulated area with the proposed mitigation.

Mr. Flaherty asked if there were tests to determine the ability of the soil to accept water. Mr. Liberman said the soil permeability is not high. Mr. Flaherty said there is significant filling proposed in the upland review area. He said there may be a benefit in moving the house farther from the wetland which would require removing a 20" tree but would reduce the fill and temporary disturbance in the upland review area.

Mr. Hutchison asked if the high water table would affect the rain garden function. Mr. Liberman said the rain garden design was based on the result of the perc tests. Mr. Hutchison asked how far the house could be moved if the tree was removed. Mr. Liberman said about 10 feet. Mr. Gallagher said they moved the driveway to make a better situation for the wetland. He said the pool is not a necessity. The proposed house is in an area that is already paved. Mr. Flaherty said the new house requires significant work in the upland review area. Mr. Gallagher said they could keep the existing driveway and move the house outside the regulated area. Mr. Flaherty said the Commission must consider both hardscape and softscape issues. Mr. Gleason said they build an addition to the existing house without a wetland permit and there would be none of the benefits of an application. He said the Commission has used a 25' guideline in the past for the distance to a wetland. Ms. Cameron said the application provides a clean slate. Mr. Flaherty said each application is unique which is why the house location is important. Mr. Gallagher said the neighbor's driveway is close to the property line and moving the house close to the property line creates a privacy issue. Mr. Hillman asked the applicant to prepare a schematic to see the concerns with moving the house. Mr. Kenyon asked if the reason for the driveway design is to avoid the tree. Mr. Liberman said that a turn-a-round would still be necessary the tree was removed. The Commission continued the public hearing to March 7, 2007 to allow the applicant to review alternative designs.

Mr. Hillman read the next agenda item:

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EPC-03-2007 Jeanette Brown, 17 Archer Lane, proposing reconstruction and repairs to a stream retaining wall.

The Commission continued this item to March 7, 2006.

Mr. Hillman read the next agenda item:

EPC-04-2007 Palmer and Julia Sparkman, proposing landscaping within the upland review area.

Mr. Lewis was recused for this application and left the meeting at 10:15 p.m.

Mrs. Sparkman represented herself. She said Sara McCool provided a letter and plan. Mr. Hillman made a motion to approve the application. Ms. Cameron seconded the application and it passed 6-0.

EPC-05-2007 Emmett Mitchell, 21 Nickerson Lane, proposing drainage repairs and improvements in the regulated area and upland review area.

Mr. Mitchell represented himself. He said there is a 55 year old drain pipe which does not drain. He said they propose to install a sump pump and three detention chambers. Mr. Kenyon asked about the size of the pipe from the sump pump. Mr. Mitchell said he did not know but it would connect to the existing pipe. Mr. Flaherty made a motion to approve the application. Mr. Hutchison seconded the motion and it passed 5-0. Mr. Kenyon abstained.

EPC-07-2007 Rod and Julia Parker, 29 Point O'Woods Road, proposing drainage repairs and improvements within the regulated area and within the upland review area

John Martucci, P.E, represented the applicant. Mr. Martucci submitted a copy of the soil scientist's report and a clearer photo of the basement flooding. Mr. Hillman said the application was complete and asked the members if they believed a hearing would be required. Mr. Flaherty and Mr. Kenyon said a hearing would be in the public interest. Mr. Parker said they have spoken with the neighbor about the project. She said their property is adjacent to the ditch and their backyard is the Parker's side yard. The Commission scheduled a public hearing for March 7, 2007.

Mr. Kenyon and Mr. Flaherty left at 10:40.

Mr. Hillman read the next hearing item.

EPC-08-2007 Nick Hahn, 483 Middlesex Road, proposing to repair a septic system within the upland review area.

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Mr. Hahn represented himself. He said his septic is failing and he would like to replace it. Steve McAlister, of McChord Engineering, submitted an engineering report. He said the only suitable area of soil testing is surrounded by wetlands. He said they were able to design a 100% code compliant system within the upland review area. The system will be 10-15 feet from the wetland. Ms. Cameron asked trees to be removed. Mr. McAlister said they are shown on the plan. Mr. Hillman asked the applicant to provide mitigation plantings to be submitted for staff approval. Ms. Cameron made a motion to approve the application. Mr. Hillman seconded the motion and it passed 4-0.

Request for Extension EPC-56-2000 Miceli, Wakeman Road, development of two residential lots.

The Commission requested an opinion from the Town Attorney regarding the requirements for granting permit extensions.

Other Business:

Minutes of September 6, 2006 Mr. Hutchison made a motion to approve the minutes as corrected. Ms. Cameron seconded the motion and it passed 5-0.

Minutes of September 13, 2006 Mr. Hillman made a motion to approve the minutes as corrected. Mr. Hutchison seconded the motion and it passed 4-0 (Ms. Cameron was recused.)

Minutes of September 27, 2006 Ms. Kirby made a motion to approve the minutes as corrected. Mr. Hutchison seconded the motion and it passed 4-0 (Ms. Cameron was recused.)

Minutes of October 4, 2006 Mr. Hillman made a motion to approve the minutes as corrected. Ms. Cameron seconded the motion and it passed 5-0.

Minutes of October 11, 2006. Mr. Hillman made a motion to approve the minutes as corrected. Mr. Hutchison seconded the motion and it passed 4-0 (Ms. Cameron was recused.)

Minutes of November 1, 2006 Mr. Hutchison made a motion to approve the minutes as corrected. Ms. Cameron seconded the motion and it passed 5-0.

Minutes of November 15, 2006. Mr. Hillman made a motion to approve the minutes as corrected. Mr. Hutchison seconded the motion and it passed 4-0 (Ms. Cameron was recused.)

Mr. Hutchison made a motion to adjourn. Ms. Cameron seconded the motion and it passed unanimously.

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The meeting adjourned at 11:20 a.m.

Respectfully submitted,

Richard B. Jacobson
Environmental Protection Officer